K

1946.

B. Electricity

File No. Emergency Powers 46

Legal Department-

13 **BRANCH**

P 35(E) 1946

Subject:— L. A. Bill No. XVI of 1946

A Bill to provide for the continuance of the Powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay.

~~Bill~~ Act- No. XX of 1946

File No. B Electricity (Emergency Powers) 46

Gen. 194 e.

518-13

Office of the R.L.A.

1 The requisite draft Bill is sent herewith.

2 The Bill has been settled in consultation with the Public Works Department. It is desired to continue the powers under Order No. D.W.(1) dated the 13th April 1945 and Order No. A 826 dated the 14th June 1943 as modified by an order of the same number dated the 22nd June 1943.

3 Provision has been made for treating every requisition for supply by reconnection, made 6 months after disconnection, on the same basis as a fresh requisition for supply.

4 The Public Works Department should consider whether it is not feasible to drop clause 4(1)(b)(i), as compliance with its provisions may cause considerable hardship to non-industrial consumers, and the maximum limit of consumption is laid down in clause 4(1)(b)(ii). If it is decided to do so, amendment of the draft will be necessary. It is also for consideration whether a maximum penalty of six months imprisonment for contravention of the provisions of the Bill will not be sufficient, specially as no limit to fine is prescribed, if the department agrees to limit imprisonment to six months, clause 11 will be redundant and will have to be deleted. If any of the changes suggested are acceptable to the Public Works Department the draft may be returned for necessary amendment.

5 The provisions of Order No. D.W.(1) dated the 13th April 1945 do not agree exactly with the provisions of the Bill(vide clause 5). Since this is intentional, it is necessary to issue fresh orders now under clause 5 and serve them on the undertakings concerned that are to be continued to be controlled.

6 The subject-matter of the Bill falls under entries 27, 29 and 37 of the Provincial Legislative List and

AF
31/7

entries 1,5,10, and 31 of the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. The Bil does not require any sanction or recommendation or affect any special responsibility of the Governor under the Governmentof India Act. As the provisions of clause 9 ff of the Bill are repugnant to the Indian Evidence Act, 1872, which is an existing Indian Law relating to entry 5 in List III, and the provisions of clause 3,4, 5 and 6 of the Bill are repugnant to the provisions of the Indian Electricity Act, 1910, which is an existing Indian Law relating to entry 31 in List III, it will be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

7 The draft Statement of Objects and Reasons at page 43 as amended is in order.

Id./.....3/8/46

Remembrancer of Legal Affairs.

U.R. to P.W.D.No. 401-L, dated the 3rd August 1946.

SMR 16-7-56
4 Copies.

Legal Department.

The Bill to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay has been published in the Bombay Government Gazette dated the 22nd August 1946. These papers are therefore returned to the Public Works Department for further action and for submitting them to H.M(P.W.D.)for ~~xx~~ his use at the time of introducing the Bill. That Department is also requested to obtain H.E.'s certificate to the effect that the Bill does not require sanction or recommendation. The requisite draft of the certificate is sent herewith.

Id./..... 22/8

Additional Secretary to Government.

U.R. to P.W.D.,No. 518-L, dated the 22nd August 1946.

MMM 16-7-46
4 Copies.

The Bill to provide for the continuance of the powers to control the sup ly, consumption, distribution and use of electrical energy in the Province of Bombay does not require my sanction or recommendation under the Government of India Act, 1935.

GOVERNOR OF BOMBAY.

SMR 16-7-56
4 Copies.

Amendment by the Hon. Member Dr. Mahajani to L.A.Bill No. XVI of 1946, passed on the 13th September 1946.

Add the following as sub-clause (4)to clause 1.

"(4) It shall be in force for a period of three years".

SWR 16-7-56
4 Copies.

No. G.S.2975

Office of the Governor's Secret

Government House

From

D.Symington, Esquire,CIE.ICS.
Secretary to the Governor of Bombay

To

The Secretary to the Bombay Legislative As
ly/Council

Ganeshkhind 21st Septembe

Subject: THE BOMBAY ELECTRICITY(EMERGENCY POWERS) BI
1946

Sir,

With reference to the above Bill, which was read for the third time and passed at the meetings o the Bombay Legislative Assembly and the Bombay Legis tive Council on the 3rd September 1946 and 13th Sept ber 1946 respectively, I am directed to state, for t information of the Honible the Speaker President that as the provisions of clause 9 of the Bill are repugnant to t Indian Evidence Act, 1872, which is an existing Indi Law relating to entry 5 in List III, and the provisi of clauses 3,4,5 and 6 of the Bill are repugnant to t provisions of the Indian Electricity Act, 1910, which is an existing Indian Law relating to entry 31 in Lis III, the Bill will have to be reserved for the consid ration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingl pleased, under section 75 of the Act, to declare that he reserves the Bill for the consideration of the Governor-General.

I have the honour to be,

Sir,
Your most obedient servant,

Sd. D.Symington.

Secretary to the Governor of Bomba

No. G.S.2976
Ganeshkhind,21st September 1946.

Copy forwarded with compliments to:-
The Secretary to Government,L.D.with reference to his letter No. 746-L,dated 19th September 1946.
Etc.

SMR 16-7-56
4 Copies.

No. 746-L
Legal Department,
Council Hall, Poona, 19th September 1946.

From

P.N.Moos, Esquire, C.I.E.,I.C.S.,
Secretary to the Government of Bombay;

To

The Secretary to the Gvernor of Bombay.

Subject:- A Bill to provide for the continuance of the powers to control the supply, consum ption, distribution and use of electrical energy in the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewithfor being presented to His Excellency the Governor, an authen -tic copy of a Bill to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay. which was read for the third time and passed at the meeti ngs of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 3rd and the 13th September 1946 respectively and to state that on the 18th September 1946 the Bombay Legislative Assembly concurred in the amendment carried out by the Bombay Legislative Council.

2 None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1)of the Government of India Act, 1935, or falls within the purview of clause (a),(b)(c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3 The subject-matter of the Bill falls under entries 27,29,and 37 of the Provincial Legislative List and entries 1,5,19, 15 and 31 of the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935.

4 As the provisions of clause 9 of the Bill are repugnant to the Indian Evidence Act, 1872, which is an

existing Indian law relating to entry 5 in List III, and the provisions of clauses 3, 4, 5 and 6 of the Bill are repugnant to the provisions of the Indian Electricity Act, 1910, which is an existing of the Indian Electricity law relating to entry 31 in List III, it will be necessary to reserve the Bill for consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

5 I am also to forward herewith six copies of each of the items Nos. 1 to 3 and two copies of item No. 4 of the papers noted in the margin. The Bill was not referred to a Select Committee.

1 Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.

2 Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.

3 Bill as read for the third time and passed by the Bombay Legislative Council,

4 Extracts from the proceedings of the Bombay Legislative Assembly dated the 3rd September 1946 and of the Bombay Legislative Council dated the 13th September 1946.

6 It is requested that His Excellency the Governor General may be moved to give his assent to the Bill before the 1st October 1946 and to convey the assent by telegram as the new Act must come into force on that date and also to communicate the date on which the assent is given.

I have the honour to be,

Sir,

Your most obedient servant,

Id./.... 19/9/46

Secretary to the Government of Bombay,
Legal Department.

Through the Secretary to the Government of Bombay,
Public Works Department.

SMR 16-7-56
4 Copies.

Legal Department.

As desired by H.E., the question whether certain provisions of the Bombay Electricity(Emergency Powers) Bill, the Bombay Essential Commodities and Cattle(Control) Bill and the Bombay Special Tribunal(Continuance)Bill are repugnant to the Indian Evidence Act, 1872 has been reexamined and the P.L.A. is inclined to adhere tohis previous opinion that the said provisions are repugnant.

2 In the case of the first Bill, that is, the Bombay Electricity(Emergency Powers)Bill, it was pointed out inter alia that the provisions of clause 9 of the Bill were repugnant to the Indian Evaidence Act, 1872, which is an existing law relating to entry 5 in List III. Clause 9 of the Bill provides that if the person referred to in section 8 is a company or other body corporate, the managi-ng director, manager, secretary or other principal officer managing its business shall be deemed to be guilty of such contravention. It is true that under section 11 of the Indian Penal Code, the word 'person' includes any company or association or body of persons whether incorporated or not. But having regard to the provisions of section 2 of the Indian Penal Code every person liable to punishment under the code, means a natural person and does not include juridical persons such as corporations. An offence if committed by such members of it as took part in the act.(See Ratanlal's Law of Crimes p. 2). The effect of clause 9 of the Bill, however, is that even though an order may be contravened by a particular person e.g. an employee of a corporate body, the managing director, manager, secretary or other principal officer managing its business, shall be deemed to be guilty of such contravention. In a criminal case the burden lies ordinarily on the prosecution to prove the existence of

facts, e.g. the contravention of an order by the person actually guilty of the contravention(see section 101 of the Indian Evidence Act) Clause 9 prescribes a different rule of evidence whereby the managing director, manager, secretary or other principal officer of the corporate body is deemed guilty of contravention committed by a corporate body, even though there may be no evidence against him that he had actually taken part in the contravention. Viewed in that light clause 9 would be repugnant to the Indian Evidence Act, 1872.

3 Sub-clause (1)of clause 6 of the Bombay Essential Commodities and Cattle(Control)Bill provides for the manner of publication and service of orders. Sub-clause (2) lays down that where a question arises whether a person was duly informed of an order, compliance with the requirements of sub-clause (1)shall be conclusive proof that he was so informed. This provision which shifts the burden of proof from the prosecution is repugnant to the provisions contained in section 101 of the Indian Evidence Act. Clause 12 which relates to offences by a corporate body and makes the director, manager, secretary or agent of such body liable for the contravention of any order is also repugnant to section 101 of the Indian Evidence Act for the reason stated in para. 2 above. Clause 12 was not referred to in the letter forwarding the Bill as it was considered sufficient to refer only to clause6(2)for the purpose of reserving the Bill for the consideration of the Governor-General with reference to section 107(2)of the Government of India Act, 1935.

4 In the case of the Bombay Special Tribunal (Continuance) Bill,1946, it was pointed out that the provisions of clause 3(2)continued in force section 9 and certain other provisions of the Criminal Law Amendment Ordinance 1943. Section 9 provides inter alia that when any person is charged before a Special Tribunal with an offence punishable under section 161 or section 165 of the Indian Penal Code, the fact that such person is in

possession of pecuniary resources for which he cannot satisfactorily account, shall be taken as a relevant fact in deciding whether he is or is not guilty of the particular offence with which he is charged. As the marginal note to the section indicates, this provision lays down a special rule of evidence. It throws the onus of proof on the accused and therefore appears to be repugnant to section 101 of the Indian Evidence Act.

5 On the whole it is safer to take the view that the provisions referred to above ~~xxxxxxx~~ are repugnant to the Indian Evidence Act, and to reserve the Bills on that account for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

Id./----

Secretary to Government.

U.O. to Secretary to Governor, No. 612-P, dated the 30th September 1946.

SMR 16-7-56
4 Copies.

I had no doubts about the second and third Bills mentioned by R.L.A. My doubts existed and still exist regarding the first because I am not sure if this relates to evidence at all. The law of evidence regulates what a Court has to take as proved or not proved, as the case may be.

2 All that the Bill says here is that if certain facts are proved(in accordance with the ordinary rules of evidence)a particular penalty may be imposed upon certain persons. It does not say that the Court must regard those persons as having been aware of the contravention, or that it must regard any facts as proved which, but for this Bill, would not be proved. As R.L.A. points out, the provision is one whereby a person may be convicted even if there is no evidence against him, i.e. if certain facts are proved he is punishable. There seems tome to be a distinction between a provision that certain facts shall be conclusive proof of some other fact and a provision that if certain facts are proved some specific person shall be liable to punishment. If, for example, a law were passed that when a car is found going at 60 miles an hour in a public place, the owner shall be liable to some specified penalty, would that be a provision of the law of evidence? I should say no, but on R.L.A.'s reasoning the right answer would appear to be yes.

3 To put the point as simply as possible, what the rovision seems to do is to alter the consequence of proving certain facts; it does not oblige the Court to take a view ofthe facts in any way different from that which it would have taken independently of the clause. Thus it would not seem to relate to evidence,but to the consequences which follow from the Cou t's conclusions (reached independently of this clause) on the evidence.

4 I admit that my own mind is not free from dount, particularly in view of the expression used "deemed to be guilty" Had the clause been expressed differently e.g. "when it is proved that a company etc. has committed an offence ..... the manager shall be liable to a penalty..... " the doubt might not have arisen.

5 This is not the occasion on which th's issue has arisen. I have since had another Bill(The Cotton(Statistics)Bill)which raises exactly the same point and which, in view of R.L.A.'s advice, I have reserved. Unless he feels certain on the point, it might be worth while, in view of further posible cases, to consult the Advocate-General.

Id./..... 5/10/46

SMR 16-7-56
4 Copies.

In the case of the Bombay Electricity(Emergency Powers)Bill which has since been passed into an Act (Bom.Act No. XX of 1946), a question has been raised whether the provision of clause 9 of the Bill is repugnant to the Indian Evidence Act, 1872, which is an existing Indian Law relating to entry 5 in List III. Clause 9 of the Bill provides that if the person referred to in section 8 is a company or other body corporate, the managing director, manager, secretary or other principal officer managing its business shall be deemed to be guilty of such contravention. It is true that under section 11 of the Indian Penal Code, the word "person" includes any company or association or body of persons whether incorporated or not. But having regard to the provision of section 2 of the Indian Penal Code every person liable to punishment under the Code, means a natural person and does not include juridical persons such as corporations. An offence if committed by a corporate body is as a rule only punishable as committed by such members of it as took part in the act.(See Ratanlal's Law of Crimes 16th edition p. 8). The effect of clause 9 of the Bill, however, is that even though an order may be contravened by a particular person e.g. an employee of a corporate body, the managing director, manager, secretary or other principal officer managing its business, shall be deemed to be guilty of such contraventio The innocence of a person is a recognised presumption in Criminal law. A man is presumed to be innocent until the contrary is proved. There is also another presumption that a man is presumed to intend the natural and probable consequences of his acts. The Indian Evidence Act accordingly provides that the onus of

of proving every thing essential to the establishment of the charge against an accused person lies upon the prosecution. It is against this salient presumption of law and rule of evidence that the Bill seeks to make certain persons criminally liable for the acts of others and to dispense with the onus of proving the guilt of those persons by adducing the necessary evidence incriminating them. What the Bill purports to lay down is that certain persons shall be presumed to be guilty of the acts committed by some other persons. notwithstanding the ordinary rule of criminal law that a person is presumed to be innocent until the contray is proved. It is against these presumptions that the provisions of clause 9 of the Bill runs contrary. In the circumstances the Bill can be said to lay down a provision which is repugnant to the Evidence Act in the matter of the burden of proof and presumption of innocence.

2. A contrary view had, however, been held that the provision of clause 9 of the Bill is not repugnant to the Indian Evidence Act. It is argued that what the provision says is that if certain facts are proved (in accordance with the ordinary rules of evidence) a particular penalty may be imposed upon certain persons. The provision does not say that the Court must regard those persons as having been aware of the contravention, or that it must regard any facts as proved which, but for the provision would not be proved. The provision is one whereby a person may be convicted even if there is no evidence against him, that is, if certain facts are proved he is punishable. There seems to be a distinction between a provision that certain facts shall be conclusive proof of some other fact and a provision that if certain facts are proved some specific person shall be liable to punishment. If, for example, a law

were passed that when a car is found going at 60 miles an hour in a public place, the owner shall be liable to some specified penalty. Such a provision would not be a provision of the law of evidence. To put the point as simply as possible, what the provision seems to do is to alter the consequence of proving certain facts; it does not oblige the Court to take a view of the facts in any way different from that which it would have taken independently of the clause. Thus it would not seem to relate to evidence, but to the consequences which follow from the Court's conclusion (reached independently of this clause)on the evidence.

3 In view of the position stated in para. 1 and particularly in view of the expression used in clause 9, namely, "deemed to be guilty", the R.L.A. does not consider that the contary view taken in para. 2 above is correct. But since the point is of great importance and is likely to recur in future, the Advocate General is requested to give his opinion.

Id./..... 9/10/46

Remembrancer of Legal Affairs.

U.R. to Adv. General, No. 1147-L, dated the 9th October 1946.

SMR 17-7-56
4 Copies.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 25th November 1946.

U.O. to the Advocate General,Bombay,No. 1147-L,-
dated the 9th October 1946.

O P I N I O N.

It is within the competence of the Provincial Government to legislate with respect to Criminal Law, under item I of Part I of List 3 in Schedule 7 of the Government of India Act subject to the exceptions there mentioned. The Provincial Legislature has by section 8 of Act XX of 1946, created offences with respect to Electricity which is an item in the concurrent list; i.e. it has enacted that the contravention of certain provisions of that act should consititute a punishable offence. The Legislation has in so doing acted under items 31 and 1 of List III, and so far was entirely within its rights and acting within its powers.

It is however, suggested that Section 9 of Act XX of 1946 is repugnant to the Evidence Act, which is a Central Act. "Evidence" is contained in item 5 of List III(the concurrent List)and if in fact that Section deals with any matter with respect to which the Evidence Act operates and deals with it in a manner repugent to the Evidence Act, the section would be protanto incompetent.

Now the substance and subject matter of the two acts speaking generally are entirely different. The Evidence Act deals with "Evidence" as such, i.e. relavancy of facts, proof, and the production and effect(but not the consequences)of Evidence. It does not create or define any offence, nor does it indicate where liability is to lie for any offence. It is not an act which purports to deal with Criminal Law only, and in fact the rules of relevancy proof

proof etc. apply equally to all kinds of proceedings whether Civil or Criminal.

The test then to be applied is whether Section 9 of Act XX, which indicates where the liability shall fall in a given set of circumstances, is repugnant to any provision of the Evidence Act. I think it is not. The Evidence Act no where provides that a person is innocent until he is proved to be guilty. That principle no doubt is a fundamental principle of Law, but it does not find statutory expression anywhere at any rate not in the Evidence Act. Section 9 only enacts that if certain facts exist i.e. are proved; Viz\ that some provision of the Act has been contravened and the contravention is by a body corporate, then a certain person shall be liable. The effect of Section 9 is to indicate who shall be liable, if certain facts are proved. It does not say how the liability of X shall be proved, but rather what facts shall constitute an offence offence by X. Those facts have to be proved like any other facts and the burden of proving them is on the prosecution.

But entirely apart from the above considerations, it seems to me that section 9 is framed in such a way as to be contrary to fundamental conceptions of justice. It is open to the legislature to say that in a given set of circumstances, A shall be liable for the Acts of B, but there is always an underlying condition that B shall be in such a position as that he must be deemed to have either authorised the act complained of(e.g. by his knowledge of consent)or shall have been negligent in not preventing the occurance or not ensuring the non-occurance of such act; this underlying condition is given effect to in statutes and vicarious liability is generally expressed to be incurred because of knowledge or consent or avoided by a person proving that he took

took precautions to prevent the offence-e.g. for example the Hoarding and Profiteering Ordinance, and the Official Secrets Act(Section 15).

Section 9 speaks of Managing Director, Manager, Secretary or Principal Officer, "managing the business",There may be cases where a Director, Manager and Principal Officer may all be managing the business. It may be conclusively shown that a particular employee has actually contravened a provision, yet the person liable to be punished will be some one else, who may have no knowledge of and may not have consented to the contravention. As the Section runs, it would not be open tohim to show that he had no knowledge, or even that he had actually taken steps by working or otherwise to prevent a contravention.

I cannot think that a Section in terms as absolute and wide as Section 9 is proper or desirable.

Sd./.....

Advocate General.

SMR 17-7-56
4 Copies.

I have very carefully considered the point raised by the Advocate General and have come to the conclusion that it is very necessary to retain the provision in its present form.

It has been my experience in the Supply Department that principal interests in Corporations and firms generally try to avoid penalties by taking refuge under plausible excuses that things are done by their servants without their consent or connivance although the profits go to them. If these excuses are allowed to prevail the desired effects will not be achieved and the law will remain a dead letter to all intents and purposes.

Vicarious liability of a master for the misdeeds of his servant is not unknown to law. Licence cases, especially, form a class by themselves, in which the master is generally held responsible for the acts of his servants(Queen Empress vs. Tayaballi Karimji Barodawalla, I.L.R. 24 Bom. 423). There is nothing improper or undesirable in s.9 as it stands.

On the other points, I agree with the opinion of the Advocate General.

Id./..... 23/12.

SMR 17-7-56
4 Copies.

Office of the Governor's Secretary.

With reference to the correspondance ending with its unofficial reference No. 166, dated the 7th January 1947, about the question of the necessity or otherwise for the reservation of Bills containing provisions of a particular nature on grounds of repugnancy, the L.D. is informed that, the Secretariat of the Governor-General(Public), to whom the question was referred for advice, have intimated that the view taken by them in the matter corresponds with the view expressed by the Advocate General, Bombay.

Id./..... 25-2-47
For Secretary to the Governor of Bombay.

U.O.R. to the L.D.No. G.S. 649, dated the 25th February 1947.

SMR 17-7-56
4 Copies.

No. GS. 3201

Office of the Governor's Secretary
Government House

From

D.Symington, Esquire, CIE, ICS.
Secretary to the Governor of Bombay

To

The Secretary to Government,
Legal Department, Poona.

Ganeshkhind, 8th October 1946.

Subject: THE BOMBAY ELECTRICITY(EMERGENCY POWERS)BILL, 1946.

Sir,

With reference to the correspondence ending with my letter No. GS. 3083, dated the 29th September 1946, on the above subject, I am directed to forward herewith the authentic copy of the Bombay Electricity(Emergency Powers)Bill, 1946, with His Excellency the Governor-General's assent signified thereon.

Your obedient servant,

Sd./.....

For Secretary to the Governor of Bombay.

SMR 17-7-56
4 Copies.

A Bill to provide for the continuance of the powers to control the supply consumption, distribution and use of electrical energy in the Province of Bombay.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 508-L
Council Hall, Poona, 21st August 1946.

Memorandum from the Public Works Department No. 3902/36-E1(II), dated the 19th August 1946.-Transferring for necessary action, the papers relating to a Bill to provide for the continuance of the powers to control the supply, consumption , distribution and use of electrical energy in the Province of Bombay.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Govt. Gazette, dated the 22nd August 1946, as Bill No. XVI of '46

2 The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani(in Urdu and Devnagari scripts)and the translations should be published in the Bombay Government Gazette, on the 24th August 1946.

3 The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd./ K.M.CHITNVIS,
Assistant Secretary to the Government of Bombay,
Legal Department.

To

The Manager, Government Central Press, Bombay(with the Bill and the Statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly and 25 copies for the use of the Legal Department).

Etc.

SMR 17-7-56
4 Copies.

Publication of the Bombay Electricity (Emergency Powers) Act, 1946.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1044-L.
Council Hall, Poona, 29th September 1946.

Letter to the Secretary to the Governor, No. 746-L, dated the 19th September 1946.

Letter from the Secretary to the Governor, dated the 29th September 1946:- Stating that the Bombay Electricity (Emergency Powers) Bill, 1946, received the assent of the Governor-General on the 28th September 1946.

RESOLUTION: The law should be published as Bombay Act No. XX of 1946 in the Bombay Government Gazette, dated the 30th September 1946.

2 The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3 A copy of the Act should be forwarded to the Public Works Department with reference to the memorandum from that Department No. 3902/36-B/(II), dated the 19th August 1946.

By order of the Governor of Bombay,

Sd./ K.M.CHITNVIS,

Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a co y of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).

Etc.

SMN 17-7-56
4 Copies.

1/3/29
11

L. A. BILL No. XVI OF 1946.

A Bill to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 3rd September 1946.)

WHEREAS it is expedient to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Electricity (Emergency Powers) Act, 1946.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on the 1st day of October 1946.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "consumer", "licensee" and "works" have the meanings assigned to them in section 2 of the Indian Electricity Act, 1910 ;

IX of 1910.

(*b*) "requisition" means a requisition made under the Indian Electricity Act, 1910, for the supply of electrical energy.

IX of 1910.

Restriction on consumption of supply.

3. Notwithstanding anything contained in any contract or agreement, the Provincial Government may by an order in writing require any consumer to, and thereupon such consumer shall, reduce his consumption of electrical energy to such extent and in such manner

and by such means as may be specified in the order. The Provincial Government shall serve a copy of the order on the licensee supplying the energy.

Discontinuance of supply in certain circumstances.

4. (*1*) Notwithstanding anything contained in the Indian Electricity Act, 1910, or any license granted thereunder or any agreement for the supply of electrical energy, the Provincial Government may, if in its opinion it is necessary or expedient for maintaining the supply or securing the equitable distribution of electrical energy, by an order in writing— IX of 1910.

(*i*) authorise, or

(*ii*) require

a licensee to, and the licensee when so required shall, discontinue or reduce the supply of electrical energy to any consumer, other than a distributing licensee, who—

(*a*) without the permission of the Provincial Government contravenes any direction issued to him under section 3 ; or

(*b*) without the permission of the Provincial Government,—

(*i*) exceeds at any time the maximum demand in kw. of electrical energy recorded in respect of him during the twelve months ending the 31st January 1943, or

(*ii*) connects or has connected load beyond that notified in writing to the licensee up to the 31st January 1943.

(*2*) The licensee shall—

(*i*) before discontinuing or reducing the supply of electrical energy under sub-section (*1*) give the consumer not less than 48 hours' notice in writing of his intention so to do ;

(*ii*) on discontinuing the supply, communicate to the Provincial Government within twenty-four hours from the date of discontinuance the circumstances in which he has done so ;

(*iii*) on being so directed by the Provincial Government recommence the supply with all possible speed.

(*3*) The licensee shall report to the Provincial Government within twenty-four hours of its coming to his notice every contravention of any direction given under section 3, or clause (*b*) of sub-section (*1*).

Restriction on supply of electrical energy and prohibition on reconnection of supply.

5. (*1*) Notwithstanding anything contained in the Indian Electricity Act, 1910, or in any license granted thereunder or in any contract or agreement or in any requisition, the Provincial Government may, if in its opinion, it is necessary or expedient for maintaining IX of 1910.

the supply or securing the equitable distribution of electrical energy, by order direct a licensee—

(*a*) not to comply, except with the permission of the Provincial Government, with—

(*i*) the provisions of any contract, agreement or requisition (whether made before or after the commencement of this Act), for the supply (other than the resumption of a supply), or an increase in the supply, of electrical energy to any person,

(*ii*) any requisition for the resumption of a supply to a consumer after a period of six months from the date of its discontinuance,

(*iii*) any requisition for the resumption of a supply made within six months of its discontinuance, where the requisitioning consumer was not himself the consumer of the supply at the time of its discontinuance;

(*b*) not to comply with any requisition for municipal purposes involving (otherwise than by way of replacement) any new works or additions to or alternations of works already installed.

(*2*) To obtain any permission required under sub-section (*1*), the licensee shall make an application to the Provincial Government in such form as the Provincial Government may notify in the *Official Gazette* in this behalf.

(*3*) On an application being made under sub-section (*2*) the Provincial Government may either refuse the permission sought or grant it either absolutely or subject to such conditions as it may think fit to impose, and may also call for such further particulars relating to the application as it may require.

Restriction on the use of electrical energy for the purpose of advertisement.

6. Notwithstanding anything contained in any contract or agreement, no person receiving a supply of electrical energy from a licensee notified in this behalf, in the *Official Gazette* by the Provincial Government, shall use or cause to be used such electrical energy in the area of supply of such licensee for exhibiting light intended for advertisement on the exterior of any premises, or on any plot of land or in any street or open place.

Continuance in force of existing Orders.

7. Every order made by the Central or Provincial Government under sub-rule (2) of rule 81 of the Defence of India Rules in respect of any of the matters specified in sections 3, 4, 5 and 6 of this Act and in force immediately before the commencement of this Act shall, so far as it could validly be made by the Provincial Government under the said sections, continue in force and be deemed

to have been made under the said sections; and every person authorised, permitted, directed or required to do anything under or in pursuance of any such order shall, so far as he could validly be so authorised, permitted, directed or required, as the case may be, by the Provincial Government under any of the said sections of this Act, be deemed to have been so authorised, permitted, directed or required, as the case may be, under the provisions of this Act.

Penalties.

8. Any person who—

(*a*) contravenes—

(*i*) any order made or deemed to have been made under section 3, 4, 5 or 6; or

(*ii*) any of the provisions of this Act; or

(*b*) is deemed to have been required or directed under section 3, 4, 5 or 6 to do or refrain from doing anything fails to comply with such requirement or direction,

shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Offences by corporations.

9. If the person referred to in section 8 is a company or other body corporate, the managing director, manager, secretary or other principal officer managing its business shall be deemed to be guilty of such contravention.

Cognizance of offences.

10. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by such public servant as may be authorised by the Provincial Government in this behalf.

Protection of action taken under Act.

11. (*1*) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order, direction or requirement made or deemed to have been made under section 3, 4, 5 or 6.

(*2*) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made or deemed to have been made under section 3, 4, 5 or 6.

Service of orders or directions.

12. Every order or direction made or issued under this Act shall, as far as may be, be served in the manner prescribed in section 53 of the Indian Electricity Act, 1910. IX of 1910.

STATEMENT OF OBJECTS AND REASONS.

With a view to conserving electrical material and energy for purposes essential to the effective prosecution of the war and to the development of industry connected with the national war economy, the supply of electricity by public electricity undertakings in the Province of Bombay has been controlled by the Government of India by their Orders in the Labour Department No. A. 826, dated the 14th June 1943, as modified on the 22nd June 1943, and No. D.W. 1, dated the 13th April 1945, issued under the Defence of India Rules. The present position as regards procuring new generating plant or spare parts for machinery, fuel supply and wagon transport is still very difficult. With the expiry of the Defence of India Act, 1939, on the 30th September 1946, the electricity undertakings will no longer get the protection afforded to them by the Orders mentioned above and they will have to supply electrical energy to all existing and new consumers in view of the provisions of section 22 of the Indian Electricity Act. This many of the Electric Supply Companies will not be in a position to do. It is, therefore, necessary in the public interest to provide for the continuance of the powers to control a few undertakings till normal conditions prevail. It is also necessary to ensure that the existing large motive power consumers do not exceed the frozen maximum demands and thereby cause embarrassment at the peak hours. The present Act is designed to achieve the above object.

M. D. D. GILDER.

19th August 1946.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XVI OF 1946]

(As read for the third time and passed by the Legislative Assembly on the 3rd September 1946).

A Bill to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay.

[Dr. M. D. D. GILDER, M.L.A.]

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L. A. BILL No. XVI OF 1946.

An Act to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 3rd September 1946.)

(As read for the third time and passed by the Legislative Council on the 13th September 1946.)

WHEREAS it is expedient to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay ; It is hereby enacted as follows :—

Short title, extent, commencement and duration.

1. (*1*) This Act may be called the Bombay Electricity (Emergency Powers) Act, 1946.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on the 1st day of October 1946.

(*4*) It shall be in force for a period of three years.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) " consumer ", " licensee " and " works " have the meanings assigned to them in section 2 of the Indian Electricity Act, 1910 ; IX of 1910.

(*b*) " requisition " means a requisition made under the Indian Electricity Act, 1910, for the supply of electrical energy. IX of 1910.

Restriction on consumption of supply.

3. Notwithstanding anything contained in any contract or agreement, the Provincial Government may by an order in writing require any consumer to, and thereupon such consumer shall, reduce his consumption of electrical energy to such extent and in such manner

and by such means as may be specified in the order. The Provincial Government shall serve a copy of the order on the licensee supplying the energy.

Discontinuance of supply in certain circumstances.

4. (*1*) Notwithstanding anything contained in the Indian Electricity Act, 1910, or any license granted thereunder or any agreement for the supply of electrical energy, the Provincial Government may, if in its opinion it is necessary or expedient for maintaining the supply or securing the equitable distribution of electrical energy, by an order in writing— IX of 1910.

(*i*) authorise, or

(*ii*) require

a licensee to, and the licensee when so required shall, discontinue or reduce the supply of electrical energy to any consumer, other than a distributing licensee, who—

(*a*) without the permission of the Provincial Government contravenes any direction issued to him under section 3 ; or

(*b*) without the permission of the Provincial Government,—

(*i*) exceeds at any time the maximum demand in kw. of electrical energy recorded in respect of him during the twelve months ending the 31st January 1943, or

(*ii*) connects or has connected load beyond that notified in writing to the licensee up to the 31st January 1943.

(*2*) The licensee shall—

(*i*) before discontinuing or reducing the supply of electrical energy under sub-section (*1*) give the consumer not less than 48 hours' notice in writing of his intention so to do ;

(*ii*) on discontinuing the supply, communicate to the Provincial Government within twenty-four hours from the date of discontinuance the circumstances in which he has done so ;

(*iii*) on being so directed by the Provincial Government recommence the supply with all possible speed.

(*3*) The licensee shall report to the Provincial Government within twenty-four hours of its coming to his notice every contravention of any direction given under section 3, or clause (*b*) of sub-section (*1*).

Restriction on supply of electrical energy and prohibition on reconnection of supply.

5. (*1*) Notwithstanding anything contained in the Indian Electricity Act, 1910, or in any license granted thereunder or in any contract or agreement or in any requisition, the Provincial Government may, if in its opinion, it is necessary or expedient for maintaining IX of 1910.

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the supply or securing the equitable distribution of electrical energy, by order direct a licensee—

(*a*) not to comply, except with the permission of the Provincial Government, with—

(*i*) the provisions of any contract, agreement or requisition (whether made before or after the commencement of this Act), for the supply (other than the resumption of a supply), or an increase in the supply, of electrical energy to any person,

(*ii*) any requisition for the resumption of a supply to a consumer after a period of six months from the date of its discontinuance,

(*iii*) any requisition for the resumption of a supply made within six months of its discontinuance, where the requisitioning consumer was not himself the consumer of the supply at the time of its discontinuance;

(*b*) not to comply with any requisition for municipal purposes involving (otherwise than by way of replacement) any new works or additions to or alterations of works already installed.

(*2*) To obtain any permission required under sub-section (*1*), the licensee shall make an application to the Provincial Government in such form as the Provincial Government may notify in the *Official Gazette* in this behalf.

(*3*) On an application being made under sub-section (*2*) the Provincial Government may either refuse the permission sought or grant it either absolutely or subject to such conditions as it may think fit to impose, and may also call for such further particulars relating to the application as it may require.

Restriction on the use of electrical energy for the purpose of advertisement.

6. Notwithstanding anything contained in any contract or agreement, no person receiving a supply of electrical energy from a licensee notified in this behalf, in the *Official Gazette* by the Provincial Government, shall use or cause to be used such electrical energy in the area of supply of such licensee for exhibiting light intended for advertisement on the exterior of any premises, or on any plot of land or in any street or open place.

Continuance in force of existing Orders.

7. Every order made by the Central or Provincial Government under sub-rule (2) of rule 81 of the Defence of India Rules in respect of any of the matters specified in sections 3, 4, 5 and 6 of this Act and in force immediately before the commencement of this Act shall, so far as it could validly be made by the Provincial Government under the said sections, continue in force and be deemed

to have been made under the said sections; and every person authorised, permitted, directed or required to do anything under or in pursuance of any such order shall, so far as he could validly be so authorised, permitted, directed or required, as the case may be, by the Provincial Government under any of the said sections of this Act, be deemed to have been so authorised, permitted, directed or required, as the case may be, under the provisions of this Act.

Penalties.

8. Any person who—

(*a*) contravenes—

(*i*) any order made or deemed to have been made under section 3, 4, 5 or 6; or

(*ii*) any of the provisions of this Act; or

(*b*) is deemed to have been required or directed under section 3, 4, 5 or 6 to do or refrain from doing anything fails to comply with such requirement or direction,

shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Offences by corporations.

9. If the person referred to in section 8 is a company or other body corporate, the managing director, manager, secretary or other principal officer managing its business shall be deemed to be guilty of such contravention.

Cognizance of offences.

10. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by such public servant as may be authorised by the Provincial Government in this behalf.

Protection of action taken under Act.

11. (*1*) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order, direction or requirement made or deemed to have been made under section 3, 4, 5 or 6.

(*2*) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made or deemed to have been made under section 3, 4, 5 or 6.

Service of orders or directions.

12. Every order or direction made or issued under this Act shall, as far as may be, be served in the manner prescribed in section 53 of the Indian Electricity Act, 1910. IX of 1910.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XVI OF 1946]

(As read for the third time and passed by the Legislative Assembly on the 3rd September 1946).

(As read for the third time and passed by the Legislative Council on the 13th September 1946).

An Act to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay.

[Dr. M. D. D. Gilder, M.L.A.]

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General

CONTENTS.

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BOMBAY ACT No. XX OF 1946—An Act to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay 179-183

The following Act of the Bombay Legislature having been assented to by the Governor-General on the 28th September 1946 is hereby published for general information.

P. N. MOOS,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XX OF 1946.

(First published, after having received the assent of the Governor-General, in the "Bombay Government Gazette" on the 30th September 1946.)

An Act to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay.

WHEREAS it is expedient to provide for the continuance of the powers to control the supply, consumption, distribution and use of electrical energy in the Province of Bombay ; It is hereby enacted as follows :—

1. (*1*) This Act may be called the Bombay Electricity (Emergency Powers) Act, 1946. Short title, extent, commencement and duration.

(*2*) It extends to the whole of the Province of Bombay.

(3) It shall come into force on the 1st day of October 1946.

(4) It shall be in force for a period of three years.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "consumer", "licensee" and "works" have the meanings assigned to them in section 2 of the Indian Electricity Act, 1910; IX of 1910.

(b) "requisition" means a requisition made under the Indian Electricity Act, 1910, for the supply of electrical energy. IX of 1910.

Restriction on consumption of supply.

3. Notwithstanding anything contained in any contract or agreement, the Provincial Government may by an order in writing require any consumer to, and thereupon such consumer shall, reduce his consumption of electrical energy to such extent and in such manner and by such means as may be specified in the order. The Provincial Government shall serve a copy of the order on the licensee supplying the energy.

Discontinuance of supply in certain circumstances.

4. (1) Notwithstanding anything contained in the Indian Electricity Act, 1910, or any license granted thereunder or any agreement for the supply of electrical energy, the Provincial Government may, if in its opinion it is necessary or expedient for maintaining the supply or securing the equitable distribution of electrical energy, by an order in writing— IX of 1910.

(i) authorise, or

(ii) require

a licensee to, and the licensee when so required shall, discontinue or reduce the supply of electrical energy to any consumer, other than a distributing licensee, who—

(a) without the permission of the Provincial Government contravenes any direction issued to him under section 3; or

(b) without the permission of the Provincial Government—

(i) exceeds at any time the maximum demand in kw. of electrical energy recorded in respect of him during the twelve months ending the 31st January 1943, or

(ii) connects or has connected load beyond that notified in writing to the licensee up to the 31st January 1943

(2) The licensee shall—

(i) before discontinuing or reducing the supply of electrical energy under sub-section (1) give the consumer not less than 48 hours' notice in writing of his intention so to do;

(*ii*) on discontinuing the supply, communicate to the Provincial Government within twenty-four hours from the date of discontinuance the circumstances in which he has done so;

(*iii*) on being so directed by the Provincial Government recommence the supply with all possible speed.

(*3*) The licensee shall report to the Provincial Government within twenty-four hours of its coming to his notice every contravention of any direction given under section 3, or clause (*b*) of sub-section (*1*).

Restriction on supply of electrical energy and prohibition on reconnection of supply.

IX of 1910.

5. (*1*) Notwithstanding anything contained in the Indian Electricity Act, 1910, or in any license granted thereunder or in any contract or agreement or in any requisition, the Provincial Government may, if in its opinion, it is necessary or expedient for maintaining the supply or securing the equitable distribution of electrical energy, by order direct a licensee—

(*a*) not to comply, except with the permission of the Provincial Government, with—

(*i*) the provisions of any contract, agreement or requisition (whether made before or after the commencement of this Act), for the supply (other than the resumption of a supply), or an increase in the supply, of electrical energy to any person,

(*ii*) any requisition for the resumption of a supply to a consumer after a period of six months from the date of its discontinuance,

(*iii*) any requisition for the resumption of a supply made within six months of its discontinuance, where the requisitioning consumer was not himself the consumer of the supply at the time of its discontinuance;

(*b*) not to comply with any requisition for municipal purposes involving (otherwise than by way of replacement) any new works or additions to or alterations of works already installed.

(*2*) To obtain any permission required under sub-section (*1*), the licensee shall make an application to the Provincial Government in such form as the Provincial Government may notify in the *Official Gazette* in this behalf.

(*3*) On an application being made under sub-section (*2*) the Provincial Government may either refuse the permission sought or grant it either absolutely or subject to such conditions as it may think fit to impose, and may also call for such further particulars relating to the application as it may require.

Restriction on the use of electrical energy for the purpose of advertisement.

6. Notwithstanding anything contained in any contract or agreement, no person receiving a supply of electrical energy from a licensee notified in this behalf, in the *Official Gazette* by the Provincial Government, shall use or cause to be used such electrical energy in the area of supply of such licensee for exhibiting light intended for advertisement on the exterior of any premises, or on any plot of land or in any street or open place.

Continuance in force of existing Orders.

7. Every order made by the Central or Provincial Government under sub-rule (2) of rule 81 of the Defence of India Rules in respect of any of the matters specified in sections 3, 4, 5 and 6 of this Act and in force immediately before the commencement of this Act shall, so far as it could validly be made by the Provincial Government under the said sections, continue in force and be deemed to have been made under the said sections; and every person authorised, permitted, directed or required to do anything under or in pursuance of any such order shall, so far as he could validly be so authorised, permitted, directed or required, as the case may be, by the Provincial Government under any of the said sections of this Act, be deemed to have been so authorised, permitted, directed or required, as the case may be, under the provisions of this Act.

Penalties.

8. Any person who—

(*a*) contravenes—

(*i*) any order made or deemed to have been made under section 3, 4, 5 or 6; or

(*ii*) any of the provisions of this Act; or

(*b*) is deemed to have been required or directed under section 3, 4, 5 or 6 to do or refrain from doing anything fails to comply with such requirement or direction,

shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Offences by corporations.

9. If the person referred to in section 8 is a company or other body corporate, the managing director, manager, secretary or other principal officer managing its business shall be deemed to be guilty of such contravention.

Cognisance of offences.

10. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by such public servant as may be authorised by the Provincial Government in this behalf.

Protection of action taken under Act.

11. (*1*) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done, in pursuance of any order, direction or requirement made or deemed to have been made under section 3, 4, 5 or 6.

(*2*) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made or deemed to have been made under section 3, 4, 5 or 6.

Service of orders or directions.

12. Every order or direction made or issued under this Act shall, as far as may be, be served in the manner prescribed in section 53 of the Indian Electricity Act, 1910.

IX of 1910.

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